

APPEAL NO. 022151
FILED OCTOBER 14, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on July 16, 2002, the hearing officer found that during the qualifying period for the 11th quarter, the appellant (claimant) had some ability to work; that he did not make a good faith job search commensurate with his ability to work; that he did not return to work in a position roughly equal to his abilities; and that he was not participating in any vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). The hearing officer then concluded that the claimant is not entitled to supplemental income benefits (SIBs) for the 11th quarter from March 5 to June 3, 2002. The claimant has filed an appeal challenging the sufficiency of the evidence to support these determinations. The respondent (carrier) filed a response urging the sufficiency of the evidence to support the challenged factual determinations.

DECISION

Affirmed.

According to the claimant's testimony and his Application for [SIBs] (TWCC-52), during the qualifying period for the 11th quarter (November 22, 2001, through February 19, 2002), he earned \$27.70 on December 18, 2001, \$16.65 on January 24, 2002, and \$14.29 on February 12, 2002, from three sales of (beauty products) products. He testified that one of the sales was made by his wife at her work, one of the sales was made by him to a neighbor, and for the third sale he went out and found the customer on his own. While his documentation included five other sales orders, the claimant explained that these sales fell through. The claimant's TWCC-52 also reflects his representation that he was not enrolled in a vocational rehabilitation program sponsored by the TRC and that his doctor has not documented that he cannot do any type of work. The claimant also stated that he had not contacted the Texas Workforce Commission. He further stated that he made various job search efforts during the qualifying period but did not document those contacts because it was his understanding that he was not required to look for work when he was already employed, as he was.

The requirements for entitlement to SIBs are set out in Sections 408.142 and 408.143 and in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102 (Rule 130.102). Rule 130.102(d)(4) sets out the ways in which a claimant may establish that he or she made a good faith attempt to obtain employment commensurate with his or her ability to work. Notwithstanding his representations on the first page of his TWCC-52, the claimant took the position that he had no ability to work during the qualifying period and that, against the recommendation of his treating doctor, he nevertheless worked at self-employment and looked for additional work, albeit not documented. However, the claimant has not appealed the finding that he had some ability to work. The hearing officer is the sole judge of the weight and credibility of the evidence (Section

410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**WILLIAM PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge